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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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60333 7590 02/19/2009 EDWIN D. SCHINDLER FIVE HIRSCH AVENUE P.O. BOX 966 CORAM, NY 11727-0966				
EXAMINER D AGOSTINO, PAUL ANTHONY				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,801

Applicant(s)

COURSE, ANTONY

Examiner

Paul A. D'Agostino

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/3/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This responds to Applicant's Arguments/Remarks filed 10/03/2008. Claim 1 has been amended. Claims 1-17 stand cancelled. Claims 18-32 are now pending in this application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 18-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,846,139 to Bair et al. (Bair) of record in view of U.S. Patent No. 5,221,082 to Curshod (Curshod) of record and U.S. Patent No. 6,308,565 to French et al. (French).

In Reference to Claim 18, 21-22, 25, 27-31

Bair discloses an interactive ball game (Fig. 1) using software for playing an existing computerized ball game, comprising:

a ball (Fig. 1 "golf ball" 24);

a housing (Fig. 1 "hosing" 12);

a screen upon which said interactive ball game is displayed (Fig. 1 "screen" 26), said screen acting as a target for said ball ("screen is made of shock absorbing material that is suitable both for stopping a golf ball, and for functioning as a substrate on which a video image can be projected" Col. 5 Lines 18-20);

means for player interaction with said ball for permitting a player to strike said ball and directing motion of said ball toward said screen for simulating player participation in said interactive game (Fig. 1 "tee area" 20); and

ball sensing means for detecting motion of said ball as said ball passes through said ball sensing means, said ball sensing means including software for determining trajectory of said ball and the player's level of success in said interactive ball game relative to said target {sensing means being an array of sensors with each array being separated from each other by a predetermined distance} {wherein the array of sensors includes a rectangular frame having individual infrared transmitters and receiver sensors located on an inner surface of said rectangular frame} (Figs. 1 and 2 "arrays" 50, 52, and 52 (Col. 5 Lines 55-64) on rectangular frame poles 58-70 with electromagnetic radiation receivers 54 which can detect infrared radiation and generate a signal in response thereto Col. 5 Lines 55-64) and {sensing means is capable of

sensing said ball in a plurality of planes} (system performs this operation with array of sensors 50, 51, and 52 of Fig. 1).

However, Bair is silent on a means for preventing said ball from hitting said screen and means for reacting by said interactive ball game to the trajectory of said ball and the player's level of success, as determined by said ball sensing means, for permitting said interactive ball game to challenge, or compete against, an effort by the player to win.

Curchod teaches of a means for preventing said ball from hitting said screen {mesh forming a translucent net in which the player can see through} (Fig. 2 "net" 140 and "golf ball strikes net" Col. 5 Lines 20-25; wherein the net is see-through) in order to protect the screen which may be more expensive and/or easily damaged.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the net as taught by Curchod into the teachings of Bair in order to provide a first line of protection for the screen which may be more expensive and/or easily damaged.

Bair as modified by Curchod is silent on a means for reacting by said interactive ball game to the trajectory of said ball and the player's level of success, as determined by said ball sensing means, for permitting said interactive ball game to challenge, or compete against, an effort by the player to win.

French teaches of system and method of tracking and assessing movement skills (Title) wherein "Valid testing and training of sport-specific skills requires that a player be challenged by unplanned cues which prompt player movement over distances and

directions representative of actual game play" (Col. 1 Lines 43-55 and Col. 1 Lines 62-67 and Col. 2 Lines 1-7) such that a means for reacting is provided to challenge, or compete against, an effort by the player to win ("These dynamic cues necessitate constant real time changes in the player's movement path and velocity..." Col. 3 Lines 55-61 wherein as in Fig. 2 a player 36 is faced with a protagonist icon 34 at a protagonist virtual location in virtual space (Col. 9 Lines 1-7). French provides this system and method in order to subject a player to a type and frequency of sport-specific dynamic cues requisite to creating an accurate analog of actual sports competition ..." Col. 3 Lines 40-44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the display of an opponent and dynamic cues as taught by French into the teachings of Bair as modified by Curchod in order to subject a player to a type and frequency of sport-specific dynamic cues requisite to creating an accurate analog of actual sports competition.

In Reference to Claims 19-20

Bair as modified by Curchod and French wherein the screen is static (Fig. 1); and wherein the screen is an interactive video display responsive to characteristics of a particular game (Fig. 1 with image of golf course).

In Reference to Claims 23-24

Bair as modified by Curchod and French discloses a system substantially

equivalent to Applicant's claimed invention. However, Bair as modified by Curchod and French is silent wherein said net has a lower edge, adjacent with a lower edge of said screen, with an elongate member attached thereto via elastic members to a surface between said screen and further comprising a ramping component, wherein said lower edge of said net is connected to said ramping component between said ramping component and said surface.

One having ordinary skill in the art at the time the invention was made would know that having the ball return to the player due to the net being designed in such a way as to direct the ball back towards the player is very common in the art. The particular arrangement as disclosed by the Applicant is a matter of design choice since any other design would perform equally well.

In Reference to Claim 26

Bair as modified by Curchod and French discloses a system substantially equivalent to Applicant's claimed invention. However, Bair as modified by Curchod and French fails to disclose wherein said housing is a framework covered in a "see through" mesh material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make use a mesh material covering a framework, since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. In re Lindberg, 93 USPQ 23 (CCPA 1952)).

In Reference to Claim 32

Bair as modified by Curchod and French discloses a system substantially equivalent to Applicant's claimed invention. However, Bair as modified by Curchod and French is silent on an alarm for ensuring that said ball does not leave said housing without a player obtaining authorized access to remove said ball from said housing.

One having ordinary skill in the art at the time the invention was made would know that because continual purchase of balls for use in the specified invention would be expensive and tedious, an alarm or some kind of notification device to prevent theft and loss of balls would be obvious and beneficial to use.

Response to Arguments

4. Applicant argues (see Applicant's Arguments/Remarks page8-9) that the rejection of Claims 21-24 and 27-31 under 35 U.S.C. §112, second paragraph is inappropriate in that limitations from the specification are not read into the claims. Examiner respectfully disagrees. Prior Examiner has invoked 35 U.S.C. §112, sixth paragraph (See Office Action Page 2) wherein it is appropriate to limit the claims to the scope of Applicant's disclosure and equivalents thereof. However, aside from the above matter, this Examiner concurs with Applicant's claiming a particular embodiment in the form of his dependent claims. Thus, the rejection of Claims 21-24 and 27-31 under 35 U.S.C. §112, second paragraph is withdrawn.
5. Applicant's arguments with respect to Claims 18-32 have been considered but are moot in view of the new ground(s) of rejection. Applicant has amended to introduce

(see Applicant's Arguments/Remarks page 11) wherein the video seeks to challenge, or compete against, the player in response to the manner by which the player has struck the game ball. Examiner has responded to these arguments with French as explained in the rejection of Claims 18-32 above. Thus, the rejection of Claims 18-32 is maintained.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is provided in the Notice of References Cited.
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
8. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. D'Agostino whose telephone number is (571)270-1992. The examiner can normally be reached on Monday - Friday, 7:30 a.m. - 5:00 p.m..
10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/
Supervisory Patent Examiner, Art Unit 3714

/Paul A. D'Agostino/
Examiner, Art Unit 3714